



## Transparency & Predictability in the Recusal of Appellate Court Judges

For a variety of reasons, judges sometimes are required by ethics rules to sit out of a case--to "recuse." While generally a rare occurrence, this happens more often in a small population state like Oklahoma than in larger states. At the Oklahoma Supreme Court, when a justice recuses, the current Supreme Court rule for how--or if--a replacement should be appointed is completely ad hoc. That is, the Chief Justice selects any licensed attorney he or she chooses to fill the spot, regardless of qualifications and without being vetted through the normal process candidates undergo before being appointed to the bench.

In practical terms, this opens the process to real or perceived abuse, because it allows the Chief Justice, if so inclined, to select replacement judges who will vote with him or her on the case. The Chief Justice knows the issues at stake in the case when the replacement is appointed, making it easy to appoint a fellow traveler on those issues. An unbiased recusal process modeled after the one used by the U.S. Supreme Court would improve transparency and predictability in the process.

### **How Would It Work?**

#### Oklahoma Supreme Court

- Nine justices on the court.
- When a justice on the court must recuse, the spot is not filled and the case is heard with eight justices instead of nine.
- If more than three justices recuse:
  1. Governor assigns a retired Supreme Court Justice.
  2. Governor assigns a qualified member of the bar.

#### Oklahoma Court of Civil Appeals & Oklahoma Court of Criminal Appeals

- There are three justices on the Oklahoma Court of Criminal Appeals and three justices on the Oklahoma Court of Civil Appeals.
- When a justice recuses, the governor assigns:
  1. Retired justice of the Court of Criminal Appeals
  2. Retired justice of the Court of Civil Appeals
  3. Governor assigns a qualified member of the bar.

### **Transparent Process. Business Certainty.**

This proposal seeks to take some of the current politics out of the judiciary and replace it with a fair and unbiased process. A formal recusal process will make the court more predictable, giving the business community notice on who may be chosen to hear their cases.

